UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIFFANY DAVENPORT, *et al.*,

Plaintiffs,

v.

Case No. 16-12875

Hon. John Corbett O'Meara

LOCKWOOD, ANDREWS, &
NEWNAM, P.C., *et al.*,

Defendants.
________________________________/

OPINION AND ORDER GRANTING
PLAINTIFFS' MOTION TO REMAND

Before the court is Plaintiffs' motion to remand, filed September 6, 2016, and which has been fully briefed. For the reasons set forth below, Plaintiffs' motion is granted.

BACKGROUND FACTS

This action is one of numerous cases filed in the wake of the water contamination crisis in Flint, Michigan. The Flint water supply became tainted with lead and other contaminants after the city began drawing its drinking water from the Flint River. Individual and class complaints have been brought against state and city officials as well as engineering firms, alleging primarily state tort claims. This court has found that it lacks subject matter jurisdiction over a number of these cases to date. See Mason v. Lockwood, Andrews & Newnam, Inc., No. 16-10663 (declining jurisdiction under local controversy exception to the Class Action Fairness Act); Boler v. Early, No. 16-10323 (no viable federal claim because § 1983 claims preempted by Safe Drinking Water Act); Bell v. Lockwood, Andrews & Newnam, P.C., Case No. 16-10825 (no jurisdiction under substantial federal question doctrine); Mays v. City of Flint, Case No. 16-11519 (removal not proper under federal officer removal statute and no jurisdiction under substantial federal question doctrine). Based upon its ruling in Bell, this court remanded dozens of individual cases to Genesee County Circuit Court, where numerous cases are pending. Several cases remain, although motions to dismiss are pending and the court has yet to assess whether these cases allege a valid basis for subject matter jurisdiction.

Turning to the present case, Defendant Veolia Water North America Operating Services, LLC, ("Veolia") removed this action from Genesee County Circuit Court, alleging that the court has jurisdiction pursuant to the Class Action Fairness Act ("CAFA"). Plaintiffs' complaint alleges that Veolia and the other Defendant professional engineering companies were negligent in providing services to the City of Flint with respect to its water system. Plaintiffs seek remand, asserting that this action falls under the local controversy exception to the CAFA.

LAW AND ANALYSIS

The Class Action Fairness Act expands federal court jurisdiction over certain class actions. The act provides:

> (2) The district court shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which –
>
> (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
>
> * * *

28 U.S.C. § 1332(d)(2). The parties do not dispute that these requirements are met here, when the aggregate amount in controversy exceeds $5,000,000 and there is minimal diversity of citizenship between the parties. See 28 U.S.C. § 1332(d)(6).

Plaintiffs contend that the court must decline to exercise jurisdiction under the "local controversy exception" to the CAFA. According to the statute:

> (4) A district court shall decline to exercise jurisdiction under paragraph (2) –
>
> (A)(i) over a class action in which –
>
> (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
>
> (II) at least 1 defendant is a defendant –
>
> (aa) from whom significant

> relief is sought by members of the plaintiff class;
> (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
> (cc) who is a citizen of the State in which the action was originally filed; and
>
> (III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and
>
> (ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; . . . .

28 U.S.C. § 1332(d)(4).

CAFA's "primary objective" is to "ensur[e] Federal court consideration of interstate cases of national importance." Standard Fire Ins. Co. v. Knowles, 133 S.Ct. 1345, 1350 (2013). The local controversy exception

> is intended to respond to concerns that class actions with a truly local focus should not be moved to federal court under this legislation because state courts have a strong interest in adjudicating such disputes. At the same time, this is a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole. Thus, the Committee wishes to stress that in assessing whether each of these criteria is satisfied by a particular case, a federal court should bear in mind that *the purpose of each of these criteria is to identify a truly local controversy that uniquely affects a particular locality to the exclusion of all others.*

S. REP. 109-14, 39, 2005 U.S.C.C.A.N. 3, 38 (emphasis added).

In a similar case involving professional negligence claims arising out of the Flint water crisis, this court determined that all of the elements of the local controversy exception were met. See Mason v. Lockwood, Andrews & Newnam, P.C., Case No. 16-10663. Specifically, the court found that (1) more than two-thirds of the proposed class are citizens of Michigan; (2) at least one defendant (Lockwood, Andrews & Newnam, P.C.) is a citizen of Michigan whose conduct forms a significant basis of the plaintiffs' claims; (3) the principal injuries occurred in Michigan; and (4) no other class actions had been filed during the preceding three years. See id., Docket No. 23. The court concluded that Mason is "a truly local controversy that uniquely affects a particular locality to the exclusion of all others" and that it was required to decline to exercise jurisdiction under the local controversy exception of the CAFA. Id. (citation omitted).

In this case, the parties appear to agree that the first three elements of the local controversy exception are met. Defendant argues, however, that the fourth element – "no other class actions" element – has not been met, precluding the application of the local controversy exception. In other words, Defendant argues that because Mason and other cases were filed prior to this one, the court must exercise jurisdiction under the CAFA.

As the Third Circuit has noted, "CAFA does not define what constitutes an "other class action" other than to limit it to filed cases asserting similar factual allegations against a defendant." Vodenichar v. Halcon Energy Properties, Inc., 733 F.3d 497, 508 (3d Cir. 2013). Based upon the legislative history and "goals of the statute," however, the Vodenichar court reasoned that the "no other class action" requirement "must not be read too narrowly." Id. The court found that a prior class action, dismissed without prejudice, was not an "other class action" as contemplated under the local controversy exception and did not bar application of the exception to the second-filed class action. Id. at 508-509. See also Bridewell-Sledge v. Blue Cross of Calif., 798 F.3d 923 (9th Cir. 2015) (two class actions filed in state court and consolidated did not preclude application of local controversy exception); Fowler v. BAC Home Loans Serv., 2014 WL 6607257 (E.D. Mo. Nov. 19, 2014) (previously dismissed class actions not "other class actions" under local controversy exception); King v. Mueller, 2015 WL 1345147 (M.D. Pa. Mar. 25, 2015) (pending action in state court not "other class action" under local controversy exception).

In enacting the local controversy exception, the legislative history shows that Congress was concerned about "copy cat class actions" filed in "State courts of different jurisdictions," when "there is no way to consolidate or coordinate the cases. . . . In contrast, when overlapping cases are pending in different federal courts, they can be consolidated under one single judge to promote judicial efficiency and ensure consistent treatment of the legal issues involved." S. REP. 109-14, 23, 2005 U.S.C.C.A.N. 3, 23. "[A]nother purpose of this criterion is to ensure that overlapping or competing class actions or class actions making similar factual allegations against the same defendant that would benefit from coordination are not excluded from federal court by the Local Controversy Exception and thus placed beyond the coordinating authority of the Judicial Panel on Multidistrict Litigation." Id. at 39.

A strict interpretation of the "no other class action" requirement would in this case create an anomalous result that is contrary to the statutory intent. See United States v. Ron Pair Enter., Inc., 109 S.Ct. 1026, 1031 (1989) ("The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters. In such cases, the intention of the drafter, rather than the strict language, controls."). Finding the local controversy exception met in Mason, the court was *required to decline* jurisdiction over that case and remand it to state court. If Defendant's argument were accepted, the court would be *required to retain* jurisdiction over a subsequently filed class action, despite the fact that it otherwise meets the requirements of the local controversy exception. Such a result would frustrate the purpose of the CAFA, which is to permit efficient coordination and consolidation of *interstate* cases of national importance.

Given that this court lacks jurisdiction over the majority of Flint water cases filed against various defendants, including state and city officials, the best opportunity to coordinate and consolidate these cases is in state court. In light of the extremely local character of this controversy – affecting Flint, Michigan, alone – there is little danger of copycat class actions popping up in other states. Allowing these cases to proceed in state court does not present the danger that CAFA was intended to prevent: ensuring "that similar, overlapping class actions do not proceed before different state courts in an uncoordinated, redundant fashion resulting in inefficiencies." Bridewell-Sledge, 798 F.3d at 932. See also Logan v. CLUB Metro USA, LLC, 2015 WL 7253935 at *3-4 (D. N.J. Nov. 17, 2015) ("[W]here multiple cases are filed in the courts of the same state, federal jurisdiction under CAFA may not be proper.").

Finding this case to present "a truly local controversy that uniquely affects a particular locality to the exclusion of all others," the court will decline to exercise jurisdiction pursuant to the local controversy exception of the CAFA.

ORDER

IT IS HEREBY ORDERED that Plaintiffs' motion to remand is GRANTED.

s/John Corbett O'Meara
United States District Judge

Date: November 1, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, November 1, 2016, using the ECF system.

s/William Barkholz
Case Manager